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International Court of Justice

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Official transcript of the International Military Tribunal in the matter of the United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering et al, Defendants, sitting at Nurnberg, Germany on 23 March 1946 1000-1300, Lord Justice Lawrence presiding.

THE PRESIDENT: Have you consulted the Defense Counsel as to the order in which they wish to take these supplemental applications?

SIR DAVID MAXWELL-FYFE: I have the order which the Tribunal has, beginning with Streicher.

THE PRESIDENT: Perhaps that would be the most convenient then. Is Streicher's counsel ready? Dr. Marx?

DR. MARX: Your Honors, Mrs. President, for the defendant Julius Streicher I have applied that Fritz Herrwerth be called as a witness before the Tribunal. This witness is a man who has been in the immediate vicinity of the defendant Streicher for years and who, because of that, is in a position to speak about all political events and give information on them which would be decisive for the decision and judgment in the case of Streicher in a number of directions. In particular, I have applied for this witness because he was present during the nights of November 9 and 10 when the defendant Streicher had a conference with the SA leader von Obernitz, in the course of which von Obernitz informed Streicher that he, Obernitz, had received an order to carry out anti-Jewish demonstrations during that night.

DR. MARX: Streicher wishes to establish the fact that he told von Obernitz that he, Streicher, wished to keep distant from the whole matter and that he considered these demonstrations a mistake and that he refused to have any part in them. Subsequently he had received that order from Berlin and had to carry it out.

THE PRESIDENT: Sir David, do you object to this alteration of our previous order?

SIR DAVID MAXWELL-FYFE: My Lord, we didn't see any change in the situation from when the Tribunal decided it, but we don't want to press against this witness being called orally, except that we must point out that there

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isn't any change. All these matters were gone into by the Tribunal. If the Tribunal feels that it would be better that the witness should be called orally, then the Prosecution will not take any objection.

THE PRESIDENT: Have these interrogatories been drawn up?

DR. MARX: No, they have not yet been completed. I beg your pardon, Mr. President, is that question put with reference to the witness Hermwerth?

THE PRESIDENT: Yes.

DR. MARX: Yes, the questions have been completed--the questions which the Defense wishes to put.

THE PRESIDENT: Dr. Marx, we will reconsider that. You have got something else haven't you, Dr. Marx. You want some document; you have got a document you are asking for, have you not, or don't you ask for that?

DR. MARX: May I talk, Mr. President? Mr. President, in fact I should like to ask that the two documents which I have referred to be placed at my disposal. That is the matter of the trial against Karl Holz in the year 1931 and the files of the disciplinary court-martial against Julius Streicher, and in that connection I have unfortunately not been able to give you the year, but I think it was psobably the year 1931.

THE PRESIDENT: But, Dr. Marx, did we not, with the agreement of the Prosecution, strike out a passage from a document which was critical of the Defendant Streicher? Does that not render this evidence entirely irrelevant?

SIR DAVID MAXWELL-FYFE: That was about the witness Lothar Streicher, the son, about an interview that took place in prison at which there were certain allegations, and these were struck out by the consent of the Prosecution. I confess I don't know whether the disciplinary proceedings in the matter of Streicher--

DR. MARX: I beg your pardon. Mr. President, if I may speak, the matter in which Lothar Streicher is playing a part is an affair from the Goering report concerning the visit and the conversations of Streicher had with three youthful criminals, during which Streicher was supposed to have taken an improper attitude. Lothar Streicher had been applied for as a witness by me to testify that at that time no such event occurred. That, in other words, is with reference to the report of the Goering commission,

whereas the other matter is concerned with a disciplinary action, and those proceedings were completed in 1931. They were heard by the disciplinary court at Munich.

THE PRESIDENT: Wasn't it all in connection with the same alleged offense by Streicher?

SIR DAVID MAXWELL-FYFE: My Lord, I have the details now, if I might read them. I think it makes them clear. The first application in relation to the proceedings against Karl Holz: The document requested herein will be used to prove the following facts:

During these proceedings Dr. Erich Bischof, an authority on the Talmud, from Leipzig, gave evidence under oath that there was, in the Jewish religious book "Sohar" a law allowing ritual murder.

THE PRESIDENT: But, Sir David, there are two different applications, aren't there? There is this application with reference to thie Jewish religious book and then there is the other application with reference to the trial of Karl Holz.

SIR DAVID MAXWELL-FYFE: As I understood it, My Lord, this application is headed "files in the trial in the matter of Karl Holz," and one of the pieces of evidence in the trial of Karl Holz, according to Dr. Marx's application, was the evidence of Dr. Erich Bischof as to the Talmud; and the application goes on to say that "these facts are relevant to my defense for the following reasons:

"The accused wishes to prove with these court records -- that is, the record from the trial of Holz -- "that the 'Stuermer' did not deal with the question of ritual murder contrary to his better knowledge." That is, as I understand it, that the "Stuermer"

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dealt with ritual murder according to the knowledge of Dr. Bischof, as expressed at that trial; That, in my respectful submission, would be irrelevant.

THE PRESIDENT: What is the date of this religious book? It was written in the Middle Ages, wasn't it?

SIR DAVID MAXWELL-FYFE: I think so, My Lord, and it was produced on the 30th of October and 4th of November, 1931, by Dr. Bischof.

Then, My Lord, the second one -- just to get it clear so Your Lordship will have it in mind -- is the files of the disciplinary proceedings in the matter of Streicher at the disciplinary court at Munich. "The documents requested herein will be used to prove the following facts:

The accused wishes to prove, with the production of these files, that he was not dismissed from his profession because of indecent assault but on political grounds and granted a part of his salary."

I myself don't see the relevance of it, but perhaps Dr. Marx can inform the Tribunal.

THE PRESIDENT: Is it charged against him in the Indictment?

SIR DAVID MAXWELL-FYFE: There is nothing about his criminal record other than anti-Jewish grounds.

THE PRESIDENT: In that connection the Prosecution agreed to strike out any reference to that indictment, didn't it?

SIR DAVID MAXWELL-FYFE: I am not sure that it is the same incident, but the Prosecution did agree to strike out the only reference to it that appeared in the record, to my knowledge -- to any reference to a matter of that kind. That was as to the treatment of certain boys in prison.

DR. MARX: Mr. President, may I, so as to clarify the matter, make a statement. The Defense of the Defendant Streicher applied to have this file brought up for the following reasons:

Streicher was asked by a Russian interrogator whether he was dismissed from his position because of indecent behavior or crimes. That makes it necessary to have that file at hand, because that file will prove that Streicher was not dismissed because of indecent or immoral conduct from his position in a school but because of his political attitude. That is one point. And quite apart from that we have that affair for which Lothar Streicher was

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supposed to be a witness. That was the matter mentioned in the report of the Goering commission. It referred to those three delinquents who were visited by Streicher and on which occasion he was supposed to have carried out indecent manipulations or gestures.

I am now coming to the question relating to Dr. Bischof. Mr. President, this matter is the following: Streicher is being accused that he, with reference to quotations from the Talmud or quotations referring to the ritual murder, either consulted incorrect translations or that he did not ascertain facts and acted negligently.

THE PRESIDENT: When you say, Dr. Marx, that he is being reproved with that, there is no such charge in the Indictment. There has no such charge been made in the course of the case of the Prosecution. The charge against him is that he provoked the German people to excesses against the Jews but not by misquoting some Jewish book but by referring to Jewish books of the Middle Ages.

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DR. MARX: May I permit myself to draw your attention to the fact that the Prosecutor Sir Griffith Jones, when he brought the case of Streicher before the Tribunal, referred to that point explicity and accused Streicher that here, against better knowledge, he had quoted passages from the Talmud; consequently, it is important that this file against Holz is consulted, since the witness Dr. Bischof states how these quotations came into existence and this Dr. Bischof is a recognized expert, but, Mr. President, the whole matter could probably be abbreviated if the prosecution would make a statement today that this whole matter regarding the ritual murder will not be made a subject of the prosecution and indict ment. This would elimintate a momentum from the trial, which would only delay the proceedings in any case and which could not play an important part against the defendant and which has nothing to do with the actual indictment.

SIR DAVID MAXWELL-FYFE: I want to make that position perfectly clear. The important point in the case for the prosecution is the use of the suggestion against the Jews, that they committed ritual murder. If someone takes out of a book in the Middle Ages and reproduces it so that it will be understood by the ordinary reader as being a practice of Jews or a reason for disliking Jews, then the prosecution say that that is an evil method of stirring up hatred against the Jews. Whether anyone can find in the Jewish book in the Middle Ages some remark about ritual murders is really inmaterial. The gravemen of the case for the prosecution is using the ritual murder accusation as a method for stirring up hatred against the Jews today. That is the case which the defendant has to meet.

DR. MARX: I beg your pardon.

THE PRESIDENT: We will consider the application.

DR. MARX: I beg your pardon, but perhaps, may I consider it necessary — may I be allowed to refer very quickly to a statement made by Sir David Maxwell-Fyfe? The position is that that special edition of "Die Stuermer" is referring to a trial which took place in 1899 at Piseck, in Moravia or Bohemia, and during which this question played an important part. It isn't that the Defendant Streicher had referred to medieval superstitions, therefore, but that he dealt with material coming from modern legal history, using material which, of course, the genuineness of which I cannot establish but which I

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cannot simply disregard as being incorrect and which, I think, the Tribunal would have to investigate. That is the reason why I am saying that this entire matter ought not to be touched at all, since we are here concerned merely with the question whether Streicher was acting to the best of his knowledge or not and if he can say trials of that kind have taken place and the judges were not unanimous, then you cannot say he acted against his better knowledge. T hat, I think, is the vital part of this matter; in other words, I personally would prefer to have the whole matter eliminated and that the prosecution would be prepared to drop this whole complex matter fromtheir part of the prosecution.

THE PRESIDENT: We will consider the application.

SIR DAVID MAXWELL-FYFE: The next one on the list that I have, my Lord, is an application by the Defendant Goering for a Major Buechs, spelled "B-U-E-X", I asked Dr. Stahmer and he was good enough to tell me that that was the same gentleman who was asked for as a witness by the Defendant Jodl. Under the spelling of "B-U-E-C-H-S." I understand the Tribunal have granted him as a witness to the Defendant Jodl and Dr. Stahmer will have the opportunity of asking him the questions then.

DR. STAHMER: Yes, I agree.

SIR DAVID MAXWELL-FYFE: The next is an application by the Defendant von Ribbentrop. He requests Herr Hilger as a witness. The grounds of the application are that Dr. Horn and the Defendant Ribbentrop, if I may just explain, the grounds of the application were that Dr. Horn and the Defendant Ribbentrop found that the witness Gauss, for whom he had asked, was not able to give as much assistance as had been expected and that they desired this witness Hilger in addition. The view of the prosecution is that the defendant should have either Hilger or Gauss as a witness and an interrogatory to the other one, and we have no objection to the witness Hilger being brought to Nurnberg for consultation.

DR. SIEMERS: Dr. Siemers, at this moment deputizing for Dr. Horn, the defense cousnel for the Defendant Ribbentrop. Actually, I was going to ask Sir David to put this matter back for a minute since Dr. Horn asked him to come here himself. We, the defense counsel, have not been informed which

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applications were going to be dealt with this morning, which is the reason why Dr. Horn isn't present at this moment but I think that, with the permission of the Tribunal, the matter can be dealt with now, as far as I know, but I have to speak without prejudice.

THE PRESIDENT: I do not know what you mean about not being informed about these applications. I made the statement yesterday that all supplementary applications for witnesses and documents would be taken this morning. I don't understand your saying you didn't know what would be done. The Tribunal has no objection to it being taken later when Dr. Horn is here, if he comes in time.

DR. SIEMERS: Yes, but does that mean that if Dr. Horn does not come soon enough--I am willing to settle the matter on his behalf as far as I have the documents.

THE PRESIDENT: Defendant von Papen was the next one.

DR. MARX: Yes. May I apologize, Mr. President, but may I please make one very brief statement? Streicher just informs me that he wishes us to state that he longer wishes the witness Lothar Streicher to be called. If, therefore, the calling of that witness is to be considered, then I herewith state that the defense no longer wishes to have him called -- Lothar Streicher, I am referring to.

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THE PRESIDENT: Hasn't that been allowed -- Lothar Streicher?

SIR DAVID MAXWELL FYFE: He was the witness who was not to be allowed on condition that the prosecution applied to strike out the passage and we agreed to that.

THE PRESIDENT: Are you dealing with von Papen?

DR. KUBUSCHOK: Yes.

SIR DAVID MAXWELL FYFE: The next is an application for the Defendant von Papen.

THE PRESIDENT: One moment, Sir David. Has that letter about withdrawing the statment about the witness Lothar Streicher been read into the record?

SIR DAVID MAXWELL FYFE: I don't know if it has been read into the record. It has been sent to the Court.

THE PRESIDENT: It better be put in as a document.

SIR DAVID MAXWELL FYFE: If your Lordship pleases. My Lord, the next is the application for the Defendant von Papen, who requests that the witness Josten, who has been approved by the Tribunal as a witness, be changed to an affidavit, which counsel already has, and Dr. Kubuschok requests that Krell be allowed as a witness. My Lord, the position with regard to Kroll was that the prosecution submitted that he was not relevant but the Tribunal allowed interrogatories for Kroll and, therefore, the prosecution accept the decision of the Tribunal that he is therefore relevant, and on that basis, as Dr. Kubuschok is dropping one witness, we feel that we can't object to his being brought as an oral witness, as the Tribunal has decided that his testimony is relevant.

THE PRESIDENT: Yes, and as to Josten, has the affidavit been submitted to you?

DR. KUBUSCHOK: Yes, I have just received it back with a signature affixed to it. The witness has just appeared and he just signed the affidavit.

THE PRESIDENT: All I am thinking of is that the prosecution won't hereafter want to have him called for cross examination.

SIR DAVID MAXWELL FYFE: We haven't seen the affidavit yet, my Lord, I am sorry. I will look into that.

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THE PRESIDENT: The result of that would be that both witnesses would have to be here.

SIR DAVID MAXWELL FYFE: I appreciate that, my Lord.

THE PRESIDENT: I was taking it that Dr. Kubuschok meant an affidavit and not an interrogatory.

DR. KUBUSCHOK: Yes, an affidavit.

SIR DAVID MAXWELL FYFE: Perhaps, my Lord, the Tribunal would postpone a decision on this point until I have had a chance of considering the affidavit and then I will communicate with Dr. Kubuschok and with the Tribunal.

THE PRESIDENT: Yes, very well.

SIR DAVID MAXWELL FYFE: May I, Mr. President, bring up yet another case. Originally the witness von Tschirschky had been granted by the Tribunal, who is at present in England. The witness has written to the Tribunal, stating that it is difficult for him to be absent or leave England for the moment and has requested that his evidence is to be collected in writing. I amagreeable to this and I have drafted an interrogatory which is now being offered to the Tribunal. This, again, would make another witness superflous, Tschirschky, as well as Josten, so that I should be very grate ful if the witness Kroll could be granted as an oral witness, since we have now savid a considerable amount of time.

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THE PRESIDENT: Sir David, you have no objection to that?

SIR DAVID MAXWELL-FYFE: No, I have no objection to that. I may have to consider certain cross interrogatories as to the witness but that won't affect the position of Dr. Tschirschky.

Next is the application by the defendant Rosenberg for a document -- Hitler's letter to Rosenberg dated 1924. This document is in regard to Rosenberg's anti-semitic attitude. As far as I know, the Prosecution does not have any of these documents but Dr. Thoma can explain what he wants. I have n objection to the presentation of these documents if they have them or if they can be found.

DR. THOMA (Counsel for the Defendant Rosenberg): Mr. President, may I first draw your attention to the fact that my evidence -- my offer of evidence regarding a letter of Rosenberg to Hitler in which Rosenberg is asking that he is not to be made a member of the Reichstag; this letter has since been handed to me. With that, this application has been settled. Secondly . . . .

THE PRESIDENT: Just a moment Dr. Thoma. Do you withdraw that applicatio because you have that letter, do you not? You said "With that the application has been settled." Do you mean that you withdraw that application?

DR. THOMA: Yes. No, no, Mr. President. The Tribunal has already permitted me to offer that document if it could be found. That letter has since been found. Furthermore, I should like to draw your attention to the fact that the document in which Rosenberg is writing to Hitler asking him to be relieved from the position of editor-in-chief of the Voelkischer Beobachter has not yet been received. Thirdly, may I ask the Tribunal that two further documents are granted me. Two documents, which, during interrogation, have alread been shown to Rosenberg, the first of which is a decree from Hitler to Rosenberg dated June, 1943, in which Hitler is instructing Rosenberg to confine himself on principle matters regarding Eastern . . . . .

THE PRESIDENT: Dr. Thoma, you are dealing now with applications which ar not in writing?

DR. THOMA: Oh yes, they are in writing. I have submitted them in writin

THE PRESIDENT: I have only got two applications here as far as I can see

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One with reference to Hitler's letter to Rosenberg dated 1924, and the other with reference to three books about Jews. These are the only two applications I have got.

DR. THOMA: Mr. President, I have made these applications during the open sessions, and as far as I know so far as they were made formally they have been submitted in writing to you. To two of them I have received a reply, but for two more, the reply is still outstanding. May I request the Tribunal, therefore, that I may repeat these two applications again.

THE PRESIDENT: Yes, you will be allowed to if you will make them clear. You ask for two further documents, the first only I understood you to say, was a decree dated June, 1943. Is that right?

DR. THOMA: That is correct, sir, and the next document is a letter from Hitler to Rosenberg in which Hitler informs Rosenberg of the reasons why he does not wish to work in the Reichstag and why he does not wish to cooperate in the elections. But I do recall that I have submitted that application in writing and may I repeat it now?

THE PRESIDENT: Yes, the application will be considered. Are you referring to the document of 1924, the letter from Hitler to Rosenberg dated 1924?

DR. THOMA: Yes, 1923 or 1924. And then, Gentlemen, I have to make one principle application regarding the question of anti-Semitism. I have asked, in that connection, to have a certain amount of literature on historical questions concerned with the question of why the Jewish problem has existed in Germany since the 8th century, and why the persecution of the Jews persisted in Germany throughout the centuries. I want to establish that in connection with that evidence, we are concerned with some tragedy which we cannot rationally understand. By producing evidence from both Jewish literature and Christian theological literature, I want to prove that we are not concerned with the fact that the German people have been reared and led on to exterminate the Jews, and that the influence of the National Socialist Party was such that the German people were made to hate the Jews, but that we are here facing irrational matter and both the Jewish and the Christian literature recognize that fact.

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I wish to establish the fact, furthermore, that an intellectual dispute between Jewry and the German race did exist, but purely on an intellectual level, and I am referring to Moritz Goldstein, who said, in 1911, that the Jewish population in Germany are administering the intellectual process of the German people. We are concerned with the problem of which part the role of Jewry has been placed, and I want to establish why such a controversy has existed. I intend only to quote literature in this connection, but I believe that my statement would not be sufficiently credible in my final address if I could not quote recognized articles in that connection and that is my problem. That is what I am concerned with.

THE PRESIDENT: Dr. Thoma, your applications will be considered.

SIR DAVID MAXWELL-FYFE: The next application is on behalf of the defendant Speer who requests a number of documents dealing with the Central Planning Committee. I have not actually had the opportunity of checking these with the exhibits, but I believe that they are the same ones which were put by Mr. Justice Jackson to the Defendant Goering in cross-examination, and if they are then they are all exhibits and they are documents which the prosecution have. These documents also relate to the Defendant Speer. If he does not have them, then we should do our best to give them copies.

THE PRESIDENT: You said they had been put to the Defendant Goering in cross-examination? If they have been put to the Defendant Goering, then they should be exhibits . . . .

SIR DAVID MAXWELL-FYFE: Yes, your Lordship, they should be exhibits. I have not had the opportunity of checking them, but if they have been presented in Court they must be exhibits.

The the next is for the defendant Seyss-Inquart . . . .

THE PRESIDENT: One moment, Sir David. All right, go on.

SIR DAVID MAXWELL-FYFE: The next one is on behalf of the Defendant Seyss Inquart for interrogatories to be submitted to the Tribunal. This regards Dr. Veberreiter who, if the Tribunal will remember, was Gauleiter of one of the outstanding Austrian Gaus, and a collaborater in the National Socialist Movement in Austria. I have no objection to this interrogation being submitted.

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THE PRESIDENT: I gave permission for an affidavit to be submitted a day or two ago. . . .

SIR DAVID MAXWELL-FYFE: That was for another Defendant. The only question is to the form and special interrogation.

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THE PRESIDENT: Have you seen the interrogatory?

SIR DAVID MAXWELL-FYFE: No, My Lord.

THE PRESIDENT: They have been deposited before us.

SIR DAVID MAXWELL-FYFE: I am sorry, My Lord; I had seen them. It is my mistake. Dr. Kubuschok right here comes into the picture once or twice. I had seen this application. And the only objection the Prosecution felt was in the somewhat leading form of the questions that were put, and perhaps my friends, Mr. Dodd and Colonel Baldwin could have a word with Dr. Kubuschok or whoever represents Seyss-Inquart, before they are actually delivered.

THE PRESIDENT: Very Well.

SIR DAVID MAXWELL-FYFE: The next one is an application in regard to the Defendant Sauckel. Dr. Kubuschok tells me there is another application on behalf of Seyss-Inquart which wasn't on the form in front of me. (Addressing Dr. Kubuschok): Perhaps you would develop that.

DR. KUBUSCHOK (Counsel for Defendant Seyss-Inquart): The Defendant Seyss-Inquart is requesting your permission to submit a questionnaire or interrogatory to the witness Bolle. The examination of that witness has been refused by the Tribunal for the reason that this is cumulative evidence. The Defendant Seyss-Inquart begs to repeat his application to have those questions clarified, this time only by means of an interrogatory. The witness cannot be spared. In particular, the subject of his statements cannot be dealt with by other direct witnesses. The other witnesses which have been namdd in this connection can only state that they have been told by Bolle regarding the actual events. Bolle is the only man who can make statements based on direct knowledge.

THE PRESIDENT: Dr. Kubuschok, if other witnesses who have been granted are going to give what we call hearsay evidence, from what they heard from Bolle, why wasn't Bolle asked for instead of one of these other witnesses?

DR. KUBUSCHOK: I do not know what intentions my colleague who was defending Seuss-Inquart was pursuing. All I know is that he has asked for two other indirect witnesses. But I am told the only direct witness to the event can be Bolle, since it is to be expected that other witnesses for

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whom this matter is not quite so important --

THE PRESIDENT: Did you want to say anything about it, Sir David?

SIR DAVID MAXWELL-FYFE: The Tribunal will remember that I informed the Tribunal that all the interrogatories to Bolle were the same as interrogatories administered to another witness, van der Wense, except two, which I think dealt with the requisitioning of lorries and about which there could be little dispute. It seemed to the Prosecution therefore that here was clear proof that this witness was entirely cumulative. The interrogation is the same, word for word, as the interrogation to the witness, van der Wense.

DR. KUBUSCHOK: That was probably not expressed clearly in the original application, namely, that those witnesses can only testify what they have heard from Bolle. In fact, we are here concerned with instructions given by Bolle personally, and he is the man who can testify to that; but if necessary we will agree that the subject of that evidence could be crossed off, as far as the other witnesses are concerned.

THE PRESIDENT: Unless the matter can be agreed upon, the Tribunal can scarcely decide on it without seeing the interrogatory to Bolle and the interrogatories to these other witnesses. Would it meet the case if we were to grant this interrogatory on the condition that if it appeared subsequently that other interrogatories when considered with this one were cumulative, they might be disregarded?

SIR DAVID MAXWELL-FYFE: Certainly, as far as I am concenred.

THE PRESIDENT: Very well.

SIR DAVID MAXWELL-FYFE: The next is the Defendant Sauckel, and Dr. Servatius and Mr. Roberts of my staff have been considering this carefully together. Dr. Servatius is not here. Perhaps Mr. Roberts can tell the Tribunal how far they got.

MR. ROBERTS, K.C: Dr. Servatius submitted a list of about 90 documents, a formidable number; but most of them are short extracts from various decrees and orders relating to the employment of labor, and it is difficult to find any reason for objecting to them. Dr. Servatius at my suggestion agreed to take from his list about ten or 15 as cumulative. There are about four documents relating to alleged ill-treatment of workers in the hands of

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the enemies of Germany, to which I have objected on the ground that they are not relevant, and as to those documents a decision of the Tribunal will be necessary on the question of principle.

My Lord, as Dr. Servatius could not be here today -- as I understand -- perhaps we could discuss the matter with the General Secretary on his return at the beginning of next week, so that the matter could then be put in a convenient and more or less agreed form to the Tribunal.

THE PRESIDENT: Yes.

Then you haven't been able to make any agreement about the witnesses, have you?

MR. ROBERTS, K.C: My Lord, I thought the position as to the witnesses was this: That Sir David some weeks ago discussed it before the Tribunal and Dr. Servatius discussed it and Sir David conceded the calling of six witnesses and interrogatories from a number of others. That was considered by Dr. Servatius and he submitted his final and much-reduced list of eleven witnesses, and that I handed to an official of the Tribunal, and I understood that that has been before the Tribunal.

THE PRESIDENT: Have you the date there? Is it the 4th of March, 1946

MR. ROBERTS, K.C: I have a document before me in German --

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THE PRESIDENT: I see. And the Prosecution's --

MR. ROBERTS, K.C.: And the Prosecution's position was fully stated by Sir David when these matters were being considered before, and it would be now really for the Tribunal, I think, to decide on those two contentions -- one for six witnesses and one for eleven. What their decision should be --

THE PRESIDENT: Sir David, that takes us to the end of the listed ones. There were some that were received later.

SIR DAVID MAXWELL-FYFE: There is one from the Defendant Frank who requests interrogatories to Ambassador Messersmith. That was granted by the Tribunal, and in an executive session. It was not requested in Counsel's consdidated applications, but heard in open court. There is obviously no objection to that in principle, that the Prosecution are aware of.

Then the defendant von Ribbentrop requests the book "America in the Battle of the Continents", by Sven Hedin --

THE PRESIDENT: Other Defendants have administered interrogatories to Mr. Messersmith, have they not?

SIR DAVID MAXWELL-FYFE: Yes, sir.

THE PRESIDENT: Have the answers been received yet?

SIR DAVID MAXWELL-FYFE: They haven't been received, I am told.

THE PRESIDENT: How long is it since they have been sent off?

SIR DAVID MAXWELL-FYFE: I will find out, My Lord. (Short pause). February 21.

THE PRESIDENT: You have seen these interrogatories, the ones now suggested by the Defendant Frank?

SIR DAVID MAXWELL-FYFE: I am not sure.

THE PRESIDENT: There are about five of them.

SIR DAVID MAXWELL-FYFE: The position is that we got them yesterday and they are still being discussed between my Delegation and the American Delegation. They actually haven't come to me yet.

THE PRESIDENT: we had better consider this.

SIR DAVID MAXWELL-FYFE: The next is an application by the Defendant, von Ribbentrop, who asks for the book "American in the Battle of the Continents" by Sven Hedin. That must be subject to the general use of books,

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and if there are passages that the Defendant wants to use, if he will tell me the passages then we can deal with their relevance when the individual passage comes up.

THE PRESIDENT: That also will be considered.

SIR DAVID MAXWELL-FYFE: If your lordship pleases. Then there is an application on behalf of the Defendant Schacht for the book "Warnings and Prophecies" by the late Lord Rothermere. The same, I submit, should apply to that. Any passages desired to be used can be extracted and shown to us and then their relevance considered when use is attempted to be made of them. Dr. Dix made agreement to that.

Now, I understand there is an application on behalf of the Defendant von Neurath. I understand that he wishes copies of the interrogations of Dr. Gauss, who is the gentlemen who is mentioned as a witness for the Defendant von Ribbentrop. The general ruling of the Tribunal has been, as I understand it, that the Defendants are only entitled to copies of interrogations which are going to be used against them, that is, their own interrogations, and it would be an extension of the rule which might lead us into general difficulties if this were extended to copies of the interrogations of other witnesses. Therefore the Prosecution object in principle to that.

But as I gather that Dr. von Luedinghausen wants it for the purpose of preparing the case, if he would care to come and see me or my staff, perhaps it could be conveyed to him and indicate any matters on which we can help him, we will be very pleased to discuss them with him.

THE PRESIDENT: Where is Dr. Gauss?

SIR DAVID MAXWELL-FYFE: In Nurnberg.

THE PRESIDENT: Can't Dr. Luedinghausen come here?

SIR DAVID MAXWELL-FYFE: I would welcome that.

THE PRESIDENT: If there is no objection to that, that will ease the situation. Both courses appear appropriate, that Dr. Luedinghausen could perhaps see you --

SIR DAVID MAXWELL-FYFE: Yes.

THE PRESIDENT: -- with reference to interrogatories and see Dr. Gauss in the prison here.

SIR DAVID MAXWELL-FYFE: I welcome both of these courses.

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THE PRESIDENT: Very well. That concludes the matters.

SIR DAVID MAXWELL-FYFE: As far as Ribbentrop is concerned --

THE PRESIDENT: Dr. Siemers, acting for Dr. Horn, perhaps you could deal with that application with reference to Hilger.

DR. SIEMERS: Yes. I am certainly prepared to do that, but since I haven't been able to talk to Dr. Horn I must ask the Tribunal that by my statement Dr. Horn is not going to be prejudiced.

Hilger is a witness of great importance, since he was a secretary atthe legation in Moscow during theperiod when negotiations for a pact were conducted between Germany and Russia and until the outbreak of the war between Germany and Russia. He is therefore the person who is well informed about the attitude of von Ribbentrop and therefore of great importance as a witness.

Until now he has only been in the background in his capacity of an important witness, since Dr. Horn had asked for Ambassador Gauss. Dr. Horn has withdrawn, as far as I know, his application for Dr. Gauss and only wishes, in reference to some less important points, to submit to him either an affidavit or a questionnaire. I assume that Sir David will agree to that solution if I submit it in that form.

THE PRESIDENT: Yes.

DR. SIEMERS: Sir David has just very kindly expressed his agreement to that course.

SIR DAVID MAXWELL-FYFE: I agree, My Lord, as I suggested, that if this witness Hilger is called as an oral witness an interrogatory be administered to the witness Gauss.

THE PRESIDENT: Very well.

That is all, isn't it?

SIR DAVID MAXWELL-FYFE: That is all.

THE PRESIDENT: The Tribunal will adjourn to consider these matters.

(The Tribunal adjourned until Monday, March 25, 1946 at 1000 hours)